IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13657 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 1 - Petitioner(s)

Versus

MAHENDRABHAI DAHYABHAI TAILOR & 1 - Respondent(s)

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Appearance :

MR JITENDRA MALKAN for Petitioner No(s).: 1,2.

MR SAURABH G AMIN for Petitioner No(s).: 1.

MR AMIT V THAKKAR for Respondent No(s).: 1,2.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 23/08/2005

ORAL JUDGMENT

1. Rule. Mr. Amin V. Thakkar, learned advocate appears and waives service of notice of rule on behalf of the respondents.

2. By filing instant petition under Article 227 of the Constitution, the petitioners, Union of India and Superintendent of Post Offices, Surat Division, Nanpura, Surat, seek to challenge the order dated 22.1.2003 recorded below application Ex.48 in Small Cause Suit No.5 of 1997 by the learned Chief Judge, Small Causes Court, Surat by which the application filed by the petitioners praying to quash and set aside the order passed below application Exhs.13 and 16 by which the defence of the petitioners is struck off and to permit the petitioners to defend the suit and to cross-examine the respondents and their witnesses and also to allow them to produce relevant and important documents in the suit came to be dismissed.

3. The respondents herein have filed Small Cause Suit No.5 of 1997 against the petitioners for eviction of the suit premises on the ground of arrears of rent and also on the ground of personal and bona fide requirement of the respondents.

4. The suit is contested by the petitioners by filing written statement. In the said suit, application Exhs.13 and 16 were moved by the respondents claiming the relief of striking off the defence of the petitioners as the petitioners have failed to deposit the amount of rent, including municipal taxes. According to the petitioners, they have deposited Rs.16,000/- which was the arrears of rent and not deposited the municipal taxes as according to them the liability of payment of municipal taxes was not on the petitioners.

5. The learned trial Judge has allowed the applications Exs.13 and 16 and thereby defence of the petitioners was struck off.

6. The petitioners have thereafter filed application Ex.48 seeking to quash and set aside the order passed below applications Ex.13 and 16 relating to striking off the defence of the petitioners and it was also prayed to permit them to cross-examine the respondents and their witnesses and also to produce relevant and important documents. The said application came to be rejected which has given rise to the present petition at the instance of the original defendants, Union of India and Superintendent of Post Offices, Surat.

7. This Court has considered the submissions advanced by Mr. Saurabh Amin, learned advocate of the petitioners/tenants and Mr. Amit V. Thakkar, learned advocate of the respondents/landlords.

8. At the outset, Mr. Amin, learned advocate of the petitioners, has stated that the Superintendent of Post Offices is ready and willing to deposit the amount of taxes as directed by the learned Judge of the Small Causes Court vide order dated 29.1.2000. He has also stated that in this connection, he has received a communication dated 23.8.2005 sent by the Senior Supdt. Of Post Offices, Surat Division, Surat addressed to him. He therefore urged that the impugned order recorded below application Ex.48 may be quashed and set aside and thereby same may be allowed in terms of the prayer made therein and the petitioners may be permitted to cross-examine the respondents and their witnesses and to produce the evidence including documentary evidence on record.

9. Mr. Amit V. Thakkar, learned advocate of the respondents, has stated that since the petitioners are ready and willing to deposit the

amount of municipal taxes as per the order recorded below Ex.13, appropriate orders may be passed.

10. This Court has considered the submissions advanced by the learned advocates of the parties, perused the impugned order and the communication dated 23.8.2005 sent by the Sr. Superintendent of Post Offices, Surat to Mr. Saurabh Amin, learned advocate of the petitioners.

11. There is no dispute with regard to the factual matrix of the case. Small Cause Suit No.5 of 1997 has been filed by the respondents against the petitioners for a decree of eviction on the ground of arrears of rent as well as the requirement of the suit premises for personal and bona fide use of the respondents. In the said suit, applications Exs.13 and 16 were also moved by the respondents praying to striking off the defence of the petitioners as the petitioners

have not deposited the arrears of rent, including municipal taxes. The learned trial Judge passed the order below application Ex.13 striking off the defence of the respondents as the respondents have not deposited the municipal taxes.

12. Now the petitioners have shown readiness and willingness to deposit the amount of municipal taxes also as per the order recorded below application Ex.13 and hence the petition deserves to be allowed by quashing and setting aside the order passed below application Ex.48.

13. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 22.1.2003 recorded below application Ex.48 in Small Cause Suit No.5 of 1997 by the learned Chief Judge, Small causes Court, Surat is hereby quashed and set aside the result of which is that the application Ex.48 is hereby granted on condition of the petitioners depositing the

amount of municipal taxes as per the order recorded by the learned trial Judge below application Ex.13 within a period of four weeks hereof before the trial court. However, it would be open for the petitioners to raise the contention that the liability of payment of municipal taxes is not upon the petitioners and the said contention shall be examined by the learned trial Judge in accordance with law. On the petitioners depositing the aforesaid amount before the trial court and if the respondents file an application for withdrawal of the said amount, the learned trial Judge shall permit the respondents to withdraw the said amount on suitable terms and conditions.

14. A copy of the communication dated 23.8.2005 sent to Mr. Saurabh Amin, learned advocate of the petitioners by Sr. Supdt. Of Post Offices, Surat is ordered to be taken on record.

15. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.M. Kapadia, J.)

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